



Office of the Mayor of Davie
Mayor Tom Truex

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Tom_Trux@davie-fl.gov

Town of Davie

6591 Orange Drive, Davie, FL 33314-3399

TO: Tom Willi
FROM: Tom Truex
RE: Procedure for speaking at public meetings.
DATE: August 2, 2004

I have attached a draft of some notes for discussion regarding procedures for speaking at public hearings/meetings. Please distribute to Town Council, and the clerk's office, and include with the backup material on the agenda when this issue will be discussed.

Regards,

A handwritten signature in black ink, appearing to read "Tom", with a long, sweeping horizontal line extending to the right.

Tom Truex

RULES FOR SPEAKING AT PUBLIC MEETINGS

The Town Council greatly values your opinions. Anyone who wishes to speak at a public hearing will be allowed to do so, as long as you follow these "Rules for Speaking at Public Meetings."

All speakers must approach the podium and speak into the microphone when it is their turn. Give the Town Clerk your Name/Address Form (available in the lobby) before you speak. You are expected to treat others respectfully during the public meeting. Please confine your comments to the subject matter being considered. Speakers will address the Town Council, and not members of the public, or others. Shouting, speaking from the audience, or any threatening behavior is not appropriate

Please try to organize your thoughts and any notes or presentations before you approach the podium. All speakers are strictly limited to the three-minute time limit, except as follows:

1. Town Staff may make an initial presentation, and may conclude with their remarks
2. The Applicant will have an opportunity to make an initial presentation, and closing remarks.
3. Speakers who represent groups of people may request additional time, **when they first approach the podium**. Please state who else you represent when you come forward to speak, and how much time you are requesting. Reasonable requests will be accommodated at the discretion of the presiding officer. Examples of representatives are attorneys, homeowner association representatives, elected neighborhood representatives, and the like. If other groups of people wish to designate a speaker, you may approach the podium together, and inform the Town Council which person will be speaking on your behalf. *You may not simply give your time to someone else on any other basis.*

SPECIAL PROCEDURES FOR CONSENT AGENDA

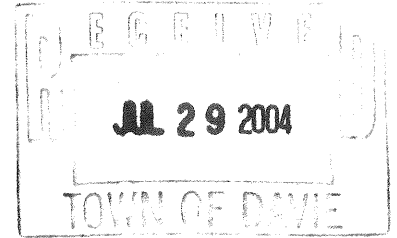
"Consent Agenda" items may be approved without discussion. If you wish to speak on an item listed on the Consent Agenda, speak to the Mayor or other Town Councilmember(s) before the meeting and request the item be pulled from the Consent Agenda. The Mayor or other Councilmember may request you be allowed to speak on the matter.

SPECIAL PROCEDURES FOR THE OPEN PUBLIC HEARING

The first 30 minutes of the first meeting of every month is reserved for the "Open Public Meeting." Speakers will not be limited to the number of topics; however, in order to comply with the *Snyder* decision, discussion will not be permitted on any pending site specific zoning, special permit, variance, land use plan amendment or site plan matter. Speakers will not be allowed to discuss any topic that is on tonight's agenda; however, speakers may speak on the items on the agenda of the regular Town Council meeting. Speakers are strictly limited to a total of three minutes; however, the following alternatives for additional time are available:

1. Should there be time remaining before the end of the 30 minutes set aside for the Open Public Meeting, previous speakers will be allowed an additional three minutes
2. You may ask the Mayor or other Councilmember to be put on the Town Council Agenda for a *special presentation*. Special Presentations are placed on the second Town Council meeting of even numbered months.
3. If you are seeking some Town Council *action*, you may request the Mayor or other Councilmember propose taking up your issue as New Business at a future Town Council Meeting.
4. You may ask the Mayor or other Councilmember, before the meeting, to speak under their name during Mayor/Councilmember Comments at the end of the meeting. The Mayor or other Councilmember may permit you to use part or all of their five minutes allotted to them for comments.

MONROE D. KIAR
TOWN ATTORNEY
TOWN OF DAVIE
6191 SW 45th Street, Suite 6151A
(954) 584-9770



MEMORANDUM

DATE: July 29, 2004
TO: Tom Willi, Town Administrator
CC: Mayor and Councilmembers
FROM: Monroe D. Kiar, Town Administrator
RE: Review of Public Meeting Procedures
Control Number: 040706

TOWN OF DAVIE
2004 JUL 29 P 3: 22
ADM. SVC. DEPT.

This memorandum is being written pursuant to the request of the Town Council at the July 14th meeting of the Town Council for the Town Attorney to review the present public meeting procedures with the Mayor and Vice Mayor individually and make recommendations as to the propriety of the present procedures. Due to the intermingling of certain legal and policy issues related to this request, this memorandum will deal with each legal and public policy issue separately. This memorandum will also propose a revised policy for public meetings which will correspond with existing case law related to the Sunshine Law and the applicable case law related to quasi-judicial procedures.

It should be noted that prior to this occasion, this office has never been requested to review the public meeting procedures for its opinion as to the meeting's propriety and the Town has adhered to the procedures outlined by the prior Town Attorney in his memorandum of May 4, 1995. Within this memorandum, many of the issues and opinions raised by the above stated memorandum and those of Ms. Aiken in her letter of June 22, 2004 will be directly addressed.

Legal Issue: Consent Agenda

During the July 14, 2004 meeting of the Town Council, certain issues were raised related to the Town's utilization of a consent agenda and its legality in light of the "public input" requirements of the Sunshine Law. Although the issue of public input in public meeting has not been directly addressed by the Legislature, the Florida courts have consistently held that public input is a necessary component of the public's right to an open public meeting. The Florida Supreme Court's decision in *Board of Public Instruction of Broward County v. Doran* continues to be the controlling case law when dealing with the issue of public input within public meetings. *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969). This decision was

correctly cited within Ms. Aitken's letter as holding that "the public may not be deprived of the right to be present and to be heard at all deliberations where decisions affecting the public are being made". *Id. at 699*. This holding has subsequently been reiterated by the Florida Supreme Court in its *Tolar* decision, by the 4th DCA, and other District Courts of Appeals. *W.R. Tolar v. School Board of Liberty County*, 398 So.2d 427 (Fla. 1981). Accordingly, it is clear that the public must be given an opportunity to actively participate in all deliberations which affect the public.

In determining the legality of the consent agenda in light of the Supreme Court decisions, it is important to discern which deliberations affect the public and require public input. Upon review of the Florida Statutes the sole area that provides significant guidance as to whether public input is required within the consent agenda is Chapter 166. Within Section 166.041, the definitions of ordinances and resolutions are established. Resolutions are defined as expressions of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body. It is therefore important to note that all items found within the consent agenda are resolutions. A review of the definition of a resolution as stated above reveals that the definition relates chiefly to matters of the administrative governance executed by the governing body and does not theoretically relate to "matters that affect the public". However, due to the fact that the consent agenda does not solely contain matters related strictly to the administrative business of the governing body, it cannot be held that because the consent agenda is comprised of resolutions that public input is not required in any matters which are contained within the consent agenda.

The Attorney General's Office and the Florida Courts have written opinions which appear to clarify this issue. In matters in which the governing body is carrying out an executive function that has traditionally been conducted without public input, the Attorney General has opined that the public has the right to be in attendance at these deliberations but has no authority to participate in the deliberation. However, if the governing body is carrying out legislative functions, the public should be afforded a meaningful opportunity to participate in the decision-making process and thereby give input. (See AGO 94-62 and Inf. Op. to the Honorable John Thrasher, January 27, 1994). The 4th DCA has also followed the Supreme Court's decision in *Wood v. Marston* in holding that the public was not deprived of its right to give public input due to the public's inability to participate in an issue that is not one on which members of the public have the right to speak prior to its resolution by the board or commission. *Law and Information Services, Inc. v. City of Riviera Beach*, 670 So.2d 1014, (Fla. 4th DCA, 1996). In the case cited above, the 4th DCA held that the public did not have the right to speak in matters concerning the City Manager contract and the selection of a new City Manager.

Read concurrently, the Attorney General's opinions, the applicable case law, and the Florida Statutes indicate that administrative matters dealing with the general administration of Town and the expressions of the governing body do not require public input. Accordingly, any matters dealing with contractual issues between the Town and

its employees or third parties, as well as resolutions expressing the governing body's sentiments, are not public input items. However, where the Town Council acts in its legislative capacity to enact rules or approve development orders that affect the public, these items may be construed as legislative in nature and require public input.

Legal issue: Site Plan

It is undisputed that pursuant to the Snyder decision, site plans are quasi-judicial items and are subject to quasi-judicial review by the courts. Within the former Town Attorney's memorandum of May 4, 1995, it is opined that "there is no requirement for public input with regard to site plans and therefore the Town's existing quasi-judicial hearing procedures would not apply to site plans". This office has found no case law that would indicate that the public input requirements established for quasi-judicial items are not to be transferred to site plans or that would indicate that site plans are to be given judicial review distinct from that given to other quasi-judicial items.

With regard to the time allotted to the public to speak before the Town Council, the Attorney General has opined that the Town Council may limit the time allotted to each individual to a "reasonable time" in order to allow for a timely public meeting. While the Attorney General has suggested that group spokespersons may be appointed to speak for interested groups, the Attorney General has recognized that the presiding officer has a duty to allow reasonable time to the public for comments. (*See AGO. Inf. Op. to Joseph Caetano, July 2, 1996*). It should also be noted that this opinion also recognized the authority of the presiding officer of the authority to regulate irrelevant debate and disruptive behavior at the public meeting and stated that these restrictions set by the governing body would constitute a reasonable time, place, and manner regulation and would not violate the speaker's First Amendment rights. *Id. Cf., Jones v. Heyman*, 888 F.2d 1328, 1333 (11th Cir. 1989).

Finally, with regard to the issue of placing unnoticed items on the agenda, it appears that the 4th DCA has addressed this issue in *Law and Information Services, Inc. v. City of Riviera Beach*. In that case the court held that there was no requirement for the governing body to give notice of a potential deviation from a previously announced agenda and no violation of the Sunshine Law where the public did not possess a right to participate in the proceedings. Accordingly, it is clear that items that do not require public participation may be added to the agenda without notice. However, it is the opinion of this office that items in which the public has a right to participate must not be placed on the agenda without first allowing the public the opportunity to be noticed as to impending deliberations on the item.

Public Procedural Policies

As stated above, this office is of the opinion that development permits such as plats and site plans, which are presently found within the consent agenda would seemingly require public input. However, issues relating to the administration of the

Town do not appear to require public input and may be approved through the present procedures utilized by the Town.

This office has reviewed the procedures used by Broward County with regard to development permits, including site plans and plats. The process utilized by Broward County establishes a "quasi-judicial consent agenda" for site specific development permits which would satisfy the Sunshine Law's public input requirement while allowing uncontested development permits to be approved in the same manner presently utilized by the Town.

The procedure designed by County Attorney, Edward Dion states that "the applicant, any Commissioner, or any member of the public may request that an application for a development permit be removed from the Quasi-judicial Consent Agenda. Such item would then be continued and would be scheduled on the Quasi-judicial Regular Consent Agenda two weeks from the date it was removed from the Quasi-judicial Consent Agenda."

It is the opinion of this office that Mr. Dion's procedure of utilizing a separate consent agenda for development permits is correct due to the fact that the public has a right to give its input on these matters. Administrative items, however, may remain on the Town's present Consent Agenda. It is further suggested that the Town should assess the financial feasibility of advertising all applications for site plans and plats prior to placing these applications on the Quasi-judicial Consent Agenda. Advertising the applications prior to placing the application on the Quasi-judicial Consent Agenda will allow the Town to conduct any necessary Quasi-judicial Hearings on the same day that the application is pulled.

As stated within this memorandum, the case law clearly sets forth that the governing body is allowed to place reasonable time, place, and manner restrictions on public speech during a meeting. The restrictions must be reasonable and narrowly tailored to effectuate a public interest. With regard to the Town's policy of preventing public comment on quasi-judicial items during the open public meetings, due to the fact that under Section 286.0115(1)(a) was enacted subsequent to the Synder and Jennings decisions, such public comments are not per se violations. It must be noted, however, that such commentary would be outside of the quasi-judicial hearing and therefore, could not be considered as evidence during the Town Council's deliberations.

However, with regard to any further policy decisions regarding decorum and the right of the public to speak on quasi-judicial items during the open public meeting, this office will not issue an opinion as to which policies should be implemented as decisions of policy are within the purview of the Town Council and not the Town Attorney's Office.

June 22, 2004

Dear Judy,

I wrote some time ago regarding the "rules & procedures for public participation" on the inside front cover of the Town Council agenda, expressing my opinion that the rules were unconstitutional as written. I have done further research since that time and believe that the current wording is also contrary to the Sunshine Law in certain paragraphs.

Utilizing the Attorney General's Government-in-the-Sunshine Manual and case law from the Florida higher courts, I have written a rough draft (attached) of my proposed revised rules, which I believe could help correct the situation. I would like to see my proposed revision of the rules of conduct placed on the Council agenda for discussion.

The following serves as an explanation of the basis my proposed changes in the attached draft:

With reference to the consent agenda, there is nothing in law that permits a municipal government to exclude the public from speaking on these items. As the Florida Supreme Court stated, "Under the Sunshine Law, a meeting is either fully open or fully closed; there are no intermediate categories." Neu v. Miami Herald Pub. Co., 462 So. 2d 821 (Fla. 1985). According to the Attorney General, "[t]he public may not be deprived of the right to be present and to be heard at all deliberations where decisions affecting the public are being made." (Citing to the Florida Supreme Court in Board of Public Instruction of Broward County v. Doran, 224 So. 2d 693 (Fla. 1969)).

There are items on the consent agenda that affect the public, not least of which are site plan committee recommendations. Currently, the "rules" state that "no public input is received on these items." This wording is clearly contrary to the law and needs to be amended to allow public comment. Moreover, site plan approval should not be on the consent agenda in the first place. The Snyder decision specifically states that site plan approval is a quasi-judicial item ("rezoning, special exception, conditional use permit, variance, site plan approval, etc."). Board of County Commissioners Brevard County v. Snyder, 627 So. 2d 469 (Fla. 1993).

There is nothing in the Snyder decision that places a time limit on the public's input or prevents public comment during the open

public meeting on agenda items that are not quasi-judicial. The Snyder decision simply establishes which decisions are quasi-judicial and sets the evidentiary rules for such hearings, stating, "in order to sustain the board's action, upon review by certiorari in the circuit court it must be shown that there was competent substantial evidence presented to the board to support its ruling." Id.

However, the Attorney General does state that generally, in order to run a timely meeting, the length of time an individual is allowed to speak may be limited, but recommends that when a large number of people attend and wish to speak, it can be requested that a representative of each side of the issue speak rather than every one present. Recently, groups of residents have asked to appoint a spokesperson, who would be given additional time to speak on an issue, but this has not been allowed. It is intrinsically unfair to limit public input to disjointed three minute segments, while the petitioner is permitted to make a lengthy presentation and rebuttal. It would be more efficient and balanced to give additional time to a few spokespersons and limit any individual who is not part of a group to the standard three minutes. The Attorney General recommends that this be done and there is no lawful reason to prohibit it. Therefore, I have included language to that effect in my draft of proposed new rules.

The rules as they are written make no provision whatsoever for the monthly open public meeting, so I have also included a paragraph to this end. Although the wording in the Charter makes no sense, stating that the time period for the open public meeting shall be "at least thirty (30) minutes or until all speakers are heard, whichever occurs first", the intent is clearly to set aside thirty minutes unless there is no one left to speak. If there are few speakers present, which could be ascertained by a show of hands, there seems no valid reason to adhere to the three minute time limit.

Finally, I have amended the "decorum" paragraph to "rules of orderly conduct", applicable to all present, and tried to narrowly construe what conduct would be agreed by all as unreasonable and/or disorderly in a way not subject to much interpretation, as mandated by the United States Supreme Court, which demands very strict scrutiny of any restrictions of the citizens' most basic First Amendment rights.

"Content-neutral time, place and manner restrictions are permissible if they are narrowly drawn to achieve a significant

governmental interest and if they allow communication through other channels. Content-based exclusions must be narrowly tailored to effectuate a compelling governmental interest." Jones v. Heyman, 888 F.2d 1328 (11th Cir. 1989); see also: Perry Educ. Ass'n. v. Perry Local Educators' Ass'n., 460 U.S. 37 (1983).

I also have additional concerns over the practice of attaching last minute items to the agenda, particularly when they may be of substantial public interest, without amending the agenda on-line. While I am not suggesting that this is illegal, it certainly defeats the notice requirement of the Sunshine Law and effectively forecloses public input on such issues. This is further aggravated when Council discusses such issues by reference to the item number, instead of title or subject matter, leaving the viewing public to try and glean what is going on from the context of the discussion.

To paraphrase the Florida Supreme Court, "Government, more so now, than ever before, should be responsive to the wishes of the public." "...open meetings instill confidence in government. The taxpayer deserves an opportunity to express his views and have them considered in the decision-making process ..." "No governmental board is infallible and it is foolish to assume that those who are elected or appointed to office have any superior knowledge concerning any government problem. Every person charged with the administration of any governmental activity must rely upon suggestions and ideas advanced by other knowledgeable and interested persons. As more people participate in governmental activities, the decision-making process will be improved." "The statute should be construed so as to frustrate all evasive devices." Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974) (referring to the Sunshine Law.)

"One purpose of the Sunshine Law was to maintain the faith of the public in governmental agencies. Regardless of their good intentions, these specified boards and commissions, through devious ways, should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made." Board of Pub. Instruction of Broward County v. Doran, 224 So. 2d 693 (Fla. 1969).

My apologies for the length of this letter, but I feel this is a matter of the utmost importance, which needs to be addressed and corrected promptly. I hope you will agree to place this issue on the agenda for Council discussion as soon as possible. (See

attached draft.)

Sincerely,

Julie Aitken

(Attorney General's Sunshine Manual can be found at:
<http://myfloridalegal.com/sunshine>).

I. WHO MAY SPEAK

Any individual who wishes to address the Council on any subject within the scope of the Council's authority, may do so providing it is accomplished in an orderly manner and in accordance with the procedures outlined below:

A. SPEAKING ON ITEMS ON THE AGENDA

1. Consent Agenda Items. These are items which the Council does not need to discuss individually and which may be voted on as a group. If an item is removed from the consent agenda for Council discussion, public input relevant to that item may also be received. Those items not removed from the consent agenda for Council discussion are not subject to public input.
2. Public Hearing Items. Any individual may address the Council on items listed under this portion of the agenda.
 - a. A name/address slip must be completed and given to the Town Clerk prior to or immediately after addressing the Council.
 - (1) Name/address slips are located in the Meeting Room lobby.
3. When one or more large groups of people attend and wish to speak for or against a particular agenda item, each group will identify itself to Council and may select a representative to act as a spokesperson on behalf of that group. Each spokesperson will be given proportionately more time to speak, provided that the group agrees that no further members will speak. Individuals who are not part of any group may speak for the time period set for individuals.

B. SPEAKING ON ITEMS NOT ON THE AGENDA

1. Individuals who wish to address Council on any subject not listed on the Public Hearing portion of the agenda may speak under any Councilmember's name after receiving prior approval from said Councilmember.
 - a. Said Councilmember will inform the Council of his/her allowing an individual to speak under his/her name.

C. OPEN PUBLIC MEETING

1. At the first Council meeting of each month, any

individual may address the Council on any subject, providing that subject is not on the agenda.

2. The time allowed for the Open Public Meeting will be 30 minutes or until all those wishing to speak have had the opportunity to do so, which ever comes sooner.
 - a. When there is a large number of speakers, there will be a strict time limit of three minutes per speaker. Speakers will be taken in turn, beginning with the those in the first row of seating, then taken row by row, on a first come first served basis. If the 30 minutes has elapsed, it shall be at the Council's discretion whether the time allotted for the Open Public Meeting should be extended to allow further speakers.
 - b. When there is a small number of speakers, additional time per speaker may be allowed, providing that each individual wishing to speak has the opportunity to do so within the 30 minute time period.

II. ADDRESSING COUNCIL, MANNER, TIME

The length of time each individual may speak must be limited in the interest of order and conduct of the business at hand. If required, the Mayor will set a **reasonable** time limit at his/her discretion. Each individual who addresses the Council shall present a name/address slip to the Town Clerk, step up to the lectern and clearly give his/her name and address for the record.

III. RULES OF ORDERLY CONDUCT

Each individual attending a Council Meeting must confine his/her comments or opinions to those relevant to the agenda item under discussion. Any individual who engages in behavior that causes unreasonable delays or disruptions of the Council Meeting or speaks in a lewd, blasphemous or threatening manner at any time during the meeting, may, if they do not promptly desist, be removed from the meeting room by the Sergeant-at-Arms at the direction of the Mayor.